[DE] Cabinet Adopts Government's Draft Amendment to the Telecommunications Act

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On 2 March 2011, the German cabinet adopted and published the government's draft amendment to the *Telekommunikationsgesetz* (Telecommunications Act - TKG). The main purpose of the proposal is the implementation of the changes to the EU's regulatory framework for electronic communications adopted at the end of 2009. Under the conditions established by the Directive, the implementation must be completed by May.

As early as September 2010, the ministry responsible, the *Bundesministerium für Wirtschaft und Technologie* (Federal Ministry for the Economy and Technology) forwarded the ministerial draft to the other government departments for approval (see IRIS 2010-10/24). Amendments to a number of aspects have been incorporated into the draft now adopted by the cabinet.

For example, the rules on holding callers in a queue, which were originally only to be applied to voice-supported premium and customer services, are now to apply irrespective of the service involved. Callers may only be put automatically on hold if the call is free of charge, the call is charged to the provider (with the exception of calls from abroad), a fixed charge is made irrespective of the time of day or a fixed-line number or "normal" mobile telephone number (with the prefix 015, 016 or 017) is used. A queue is now defined as a period in excess of 30 seconds.

The faster expansion of "high-capacity" public next generation networks (NGNs) is to be included as a new regulatory objective. In addition, the draft provides for the current regulatory objective of guaranteeing the range of universal services to be modified to ensure that urban and rural areas have the same basic provision of services. The intention is also to reduce the digital divide.

Changes are also planned with regard to access regulation: when it comes to imposing access obligations, for example, the government's draft states that incentives for efficient infrastructure investment are to be taken into account. It also provides for network operators with considerable market power to be obliged to offer a standard service in the future if they are subject to access obligations as far as their network infrastructure on the wholesale market is concerned.

In the area of consumer protection, a new provision that has been inserted is an explicit obligation to activate the customer's number within one day of a change

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of provider.

Civil rights activists criticise the new provisions compared with the ministerial draft that involve interference with data protection. For example, *Arbeitskreis Vorratsdatenspeicherung* (Working Group on Data Retention) warns against the planned repeal of section 92 TKG, not least because of the danger of industrial espionage. If this provision were to be deleted, personal data could be sent abroad without any restriction, thus putting confidential communications data "within the reach of foreign authorities and intelligence services". Data may currently only be sent abroad "if this is necessary for the provision of telecommunications services, for the issue or despatch of bills or for combating abuses". The planned creation of "registers of suspicions of abuse" and the possibility granted to service providers of producing call logs for the purpose of remedying faults and combating abuses are also criticised as going too far and being too ill-defined.

The deletion of section 48(4) TKG proposed in the ministerial draft would mean a further watering down of the provisions on the digital switchover as far as radio broadcasts are concerned. According to that section, set manufacturers were to be obliged to equip radios to receive digital broadcasts from 2015, whereas according to the government's draft this obligation would be completely dropped. The ministerial draft itself weakened the obligation laid down in the current TKG to switch off analogue VHF radio transmissions by 2015 by allowing the current frequency licence holders to apply to have their frequency allocation renewed once for a further ten years.

The draft law is now before the Bundesrat and is due to be debated in the Bundestag for the first time on 15 April 2011.

Entwurf eines Gesetzes zur Änderung telekommunikationsrechtlicher Regelungen vom 2. März 2011

http://www.bmwi.de/BMWi/Redaktion/PDF/Gesetz/referentenentwurf-tkg-2011,property=pdf,bereich=bmwi,sprache=de,rwb=true.pdf

Draft of a law amending telecommunications regulations, of 2 March 2011

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